THE HON'BLE MR JUSTICE B.PRAKASH RAO

and

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT APPEAL NO : 1559 of 2005

Dated: 25.10.2005

Between:

A. Durgaiah S/o Hanumaiah
Retired Conductor, E.No.91562,
R/O 3-50, Aladurg, Amdole Taluk,
Medak District.

..... APPELLANT

AND

A.P.S.R.T.C. Rep. by its Managing Director
Musheerabad, Hyderabad and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE Dr.JUSTICE G.YETHIRAJULU

WRIT APPEAL No.1599 of 2005

JUDGMENT: (per the Hon'ble Sri.Justice B.Prakash Rao)

Heard Sri A.K.Jayaprakash Rao, learned counsel appearing for the appellant and also Sri V.T.M.Prasad, learned Standing Counsel appearing on behalf of the respondent-Corporation and at their request the main appeal itself is taken up for

disposal.

The appellant, who has been working as a conductor, filed this appeal, *inter alia,* seeking to assail the orders of this Court in allowing the writ petition at the instance of the respondent-Corporation/Management, wherein, the award passed by the Labour Court on 18.07.2000 was sought to be set aside.

A few facts which are necessary for disposal of this appeal are that while the appellant was conducting the bus on 14.11.1996, certain irregularities having been noticed, a charge sheet was issued on 22.11.1996 to the following effect:

1. For having violated the rule 'Issue and Start' which constitutes misconduct under Reg.28(vi)(a) APSRTC employees (conduct) Regulations, 1963.

2. For having failed to collect the requisite fare and issued tickets to four passengers who boarded at Kodoor stage 12/13 and found alighting at Pulkal stage No.14, which constitutes serious misconduct under Eg.28(xxxii) & (vi) (a) of APSRTC Employees (Conduct) Regulations, 1963.

3. For having failed to close the SR against stage No.14 of Rs.2/- denomination which constitutes misconduct under Reg.28(xxvi) of APSRTC Employees (conduct) Regulations, 1963.

Thereupon, on submission of the explanation by the appellant, a domestic enquiry was conducted against him and ultimately after following the due procedure, the appellant was removed from service. Thereafter, the appellant sought reference to the Labour Court which was taken on file as I.D.No.100 of 1997, wherein, accepting the finding as to the guilt of the appellant, the matter was taken up with consent under Section 11-A of the Industrial Disputes Act, 1947 and ultimately the Labour Court passed an award setting aside the order of removal dated 06.05.1997 holding that the same is not proportionate to the gravity of charges made against the appellant and therefore, directed for reinstatement of the petitioner with continuity of service, however, without any back wages. The said award was assailed by the respondent-Corporation by way of a writ petition and the learned single Judge, taking into account the finding of the Labour Court that the appellant had collected the money and did not issue the ticket, set aside the award.

Learned counsel for the appellant submits that having regard to the charges framed especially charge No.2, there is absolutely no basis for the Labour Court as well the learned Single Judge for recording a finding that the appellant has collected the fare

and failed to issue the tickets in fact that itself leads that he has failed to collect the requisite fare and issue the tickets and therefore, the finding of the Labour Court as well as the learned Single Judge is not correct and thus the award need not be set aside.

Learned standing counsel appearing for the respondent sought to sustain the finding *inter alia* on the ground that evidence on record support the finding in regard to the collection of fare.

Having heard the learned counsel for the appellant and also the learned Standing Counsel appearing on behalf of the respondent and on a perusal of the material on record, there is no dispute with regard to the chequered events leading to the removal of the appellant after conducting domestic enquiry in respect of the irregularities found during the check made while the appellant was conducting the bus. However, it is to be noted, as pointed out above, charge No.2 reads only about the failure to collect the requisite fare and issuance of the tickets to the passengers. Wheras, the Labour Court, after taking into consideration the evidence on record, sought to proceed on the ground that in fact the appellant had already collected the fare from the passengers at the boarding point itself and did not issue the tickets. The same was taken as basis by the learned Single Judge and ultimately found that the order of removal is perfectly justified.

On a reading of the charges and also the evidence on record, there is no whisper in regard to collection of fare by the appellant. The only charge made against him is that he did not collect the fare and issue the tickets. In view of the facts and circumstances of the case, it is clear that the finding of both the Labour Court as well as the learned Single Judge is not based on any evidence or in consonance with the charges framed against the appellant. Therefore, it is to be held that the discretion exercised by the Labour Court in ordering reinstatement of the appellant without back wages and continuity of service does not warrant any interference of this Court in exercising the powers under Article 226 of the Constitution of India.

Accordingly, the appeal is allowed and the Award of the Labour Court in I.D.No. 100 of 1997 dated 18.07.2000 is restored. No costs.

(B.PRAKASH RAO,J)

Dated 25th October, 2005.

SH (Dr.G.YETHIRAJULU, J)